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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 990

Case No. 1089: ABU SIRDANEH

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Victor Yenyi Olungu, Ms. Marsha A. Echols;

Whereas, on 26 November 1998 and 15 May 1999, Mohammad Hassan Abu Sirdaneh, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 June 1999, the Applicant, after making the necessary corrections, again filed an application containing pleas which read as follows:

> "I am requesting that you will hopefully order the rescinding of the decision of refusing my request for withdrawal of my resignation within thirteen days from submitting it and - while still being in duty. I have been an UNRWA staff member for 28 years. This means that I need two more years to qualify for early voluntary retirement, the fact that I was unaware of, for I am an illiterate man."

Whereas the Respondent filed his answer on 24 February 2000;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 July 1969 as Water Supply Attendant at Jarash Camp, Jordan, under the daily paid category. Effective 1 January 1975, the Applicant accepted a temporary indefinite appointment as an Area staff member in the capacity of Water Supply Attendant at Jarash Camp. During the course of his employment from 10 March 1971 to 23 July 1992, the Applicant received a number of reprimands and disciplinary suspensions for unauthorized absences and negligence in performing his duties. Effective 1 August 1992, the Applicant was transferred to the post of Guard at the same salary and without change in employment status.

On 6 August 1997, the Applicant submitted his resignation effective 7 September 1997, claiming personal reasons unrelated to his job.

Upon receipt of the Applicant's letter of resignation, the Senior Personnel Assistant advised the Applicant of the consequences of his action and that in two years he would be eligible for early voluntary retirement benefits. The Applicant stated that he was aware of the Agency Rules and Regulations and insisted on resignation notwithstanding. On 12 August 1997, the Area Officer, Irbid and Camp Services Officer, Jarash Camp, again attempted to dissuade the Applicant from resigning, to no avail.

On 20 August 1997, the Applicant was informed in writing that his resignation had been accepted.

On the same date, the Applicant requested that his resignation be withdrawn. On 2 September 1997, the Applicant was advised by the Field Personnel Officer and Deputy Director of UNRWA operations that the Director of UNRWA Operations had not approved the withdrawal of the Applicant's resignation due to the Agency's financial situation. The Applicant renewed his request for reinstatement on 6 October and 13 October 1997, but was rebuffed on both occasions.

On 25 October 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB submitted its report on 19 August 1998. Its evaluation, judgement and recommendation read as follows:

"III. EVALUATION AND JUDGEMENT

27. ...

(a) The Board noted that the Administration's refusal to reinstate the Appellant following his resignation was properly made in accordance with Area Staff [Regulations and Rules].

(b) The Board also noted that the Appellant's behaviour through his years of service with the Agency was improper and was served with several disciplinary measures.

(c) In this context, the Board believes that the Administration has acted within the framework of standing [regulations and rules] without the interference of prejudice or any other extraneous factors.

IV. RECOMMENDATION

28. In view of the foregoing and without prejudice to any further oral or written submission to any party, the Board unanimously makes its recommendation to uphold the Administration's decision appealed against and that the case be dismissed."

On 30 August 1998, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

I have carefully reviewed the Board's report and noted its conclusion. The Board concluded that the Administration, in exercising its discretion not to allow you to withdraw your resignation acted within the framework of the Area Staff Regulations and Rules, without the interference of prejudice or any other extraneous factors. The Board unanimously recommended upholding the Administration's decision and dismissing your appeal.

I agree with the Board's conclusion and accept its recommendation. Your appeal is hereby dismissed.

..."

On 27 June 1999, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention are:

1. The notice period contained in the Applicant's resignation operated as a grace period during which the Applicant was permitted to withdraw his resignation without approval by the Agency.

2. The Applicant's decision to submit his resignation was due to severe personal and psychological difficulties which should have been considered favourably in permitting the Applicant to reverse his decision to resign.

3. The Applicant's termination of employment was conditioned on acceptance by the Agency of his resignation

Whereas the Respondent's principal contentions are:

1. The resignation from employment by the Applicant did not require acceptance by the Agency and consequently was effective upon submission.

2. The Applicant's attempted withdrawal of his resignation was subject to the Agency's unfettered exercise of managerial discretion and the rules regarding re-employment.

3. The Respondent's refusal to re-employ the Applicant was soundly based on management discretion and not tainted by prejudice or improper motivation.

4. The Applicant's personal or psychological troubles do not provide a proper basis for permitting withdrawal of a resignation.

The Tribunal, having deliberated from 3 to 22 November 2000, now pronounces the following judgement:

I. The Applicant presented his resignation on 6 August, effective 7 September 1997. On 20 August 1997, he attempted to withdraw his resignation, alleging a right to do so during what he referred to as the "grace period", i.e. the period of notice that he gave to the Administration. In the Tribunal's opinion, with respect to resignations the concept of a grace period does not exist. A grace period would imply that a resignation does not become immediately effective. In Judgement

No. 874, *Abbas* (1998), the Tribunal held that a resignation becomes effective upon receipt. In paragraph III of the Judgement the Tribunal held that:

> "There is no indication that the validity of the resignation is conditioned on acceptance. In addition, if the rule were to require consent in order to make resignation effective, then a staff member who wished to leave would be at the mercy of the Agency which, for either arbitrary or malicious reasons, wished to impede a staff member's departure. The Tribunal cannot conceive that the rule was intended to confer on the Agency such authority over a staff member's decision to leave."

II. Area staff rule 109.6, paragraph 1, provides that "[a] staff member resigns who gives to the Agency a written notice of resignation as required under paragraphs 2 and 3 ... A resignation as here defined is always initiated by a staff member." Paragraph 3 of the same rule provides that "[e]very notice of resignation shall contain a written statement of the staff member's decision to resign, shall be signed by the staff member and shall specify the date on which he/she proposes that his/her resignation should take effect."

III. Obviously, this notice period is in favor of the Agency. It provides the Agency with sufficient time to take the necessary measures to prevent an interruption of the flow of the work. If a unilateral right to withdraw a resignation at any time within the notice period existed, the Agency's replacement process would be interfered with, particularly when a withdrawal is attempted towards the end of the notice period.

IV. However, the record shows that in 1997, a policy was in effect in UNRWA permitting the withdrawal of resignations under certain specific conditions. In Jordan Field Circular No. J/17/97, of 12 November 1997, the Director of UNRWA Operations, Jordan, advised the staff of the prior practice in the Jordan Field to accept the withdrawal as long as it was submitted during the notice period required for the resignation and on condition that the service of the resigning staff member was always satisfactory. He further stated that, in future, withdrawal of resignations would not normally be accepted unless it was evident that such withdrawal was "in the sole interest of the work". In such case, withdrawal of a resignation "required his previous approval." This practice was

confirmed in a fax message from the Director of UNRWA Operations of 21 May 1998, to the Chief, Human Resources Division, HQ, (Gaza).

V. The Tribunal notes that the Applicant's file contained reference to a number of disciplinary actions taken against him, which led to a final warning. The Applicant was disciplined because he often arrived late for work, frequently left his job during working hours without permission; and, was absent from duty without prior permission on a number of occasions. The Applicant was advised that if his work performance did not improve, the Agency would be obliged to terminate his services. Since the record shows that the Applicant did not possess a consistent satisfactory work record, as required under Jordan Field Circular No. J/17/97, the Tribunal concludes that it was not in the best interest of the Agency to permit withdrawal of his resignation. Consequently, the Agency was correct in its refusal to accept the withdrawal.

VI. Furthermore, the Tribunal is satisfied that the Applicant was sufficiently warned as to the consequences of his resignation, such as relinquishing the benefits of taking early retirement two years later, and that the Applicant chose to ignore such warnings at the time.

VII For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Victor YENYI OUNGU
Member

New York, 22 November 2000

Maritza STRUYVENBERG
Executive Secretary

CONCURRING OPINION OF MS. MARSHA A. ECHOLS

I. I concur in the judgment.

II. In *Abbas* the Tribunal enunciated a strict rule regarding the withdrawal of a resignation. A resignation is "effective" when submitted and without the consent of the agency. Once effective, it may only be withdrawn (and the employee reinstated) subject to the rules on reemployment. The jurisdictions that follow this strict rule usually premise it on the need for an agency to be able to plan and manage its affairs. Nevertheless, the strict rule is sometimes made less harsh, for example, by requiring the employer to have a reasonable basis for refusing to consent to the withdrawal.

III. Other jurisdictions, even those with large numbers of employees and complex institutional structures, are more flexible in their approach and permit a withdrawal before the effective date of the resignation so long as, for example, there will be no administrative disruption or there has been neither the hiring nor the commitment to hire a replacement. (See, *e.g.*, 5 C.F.R. 715.202). This approach achieves a better balance between the interests of the Agency and those of its employees. Also it is more in keeping with the spirit of the United Nations, including its policies on human and labor rights. It also seems to accord with the Applicant's perception of the practice of the Respondent and, to some extent, with the policy announced in UNHRA Circular No. J/17/97. The Applicant argues that the Respondent regularly permitted employees to withdraw their resignations within the notice period. He implies that both supervisors and colleagues told him that it was possible to stop or withdraw a resignation within the grace period, apparently without conditions. He claims that several staff members did so. Whether the Applicant's perceptions or the Circular represent the true state of affairs, the Respondent's internal approach to the needs of good management and the withdrawal of a resignation was less strict than that stated by the Tribunal in *Abbas*.

IV. In this case the reasons given to the Applicant by the Respondent for its refusal to accept the withdrawal were related to administration. In a 2 September 1997 memorandum the Field Personnel Officer refused to accept the withdrawal of the resignation for administrative reasons - "in view of the Agency's financial situation" - not because of the past behavior of the Applicant. The refusal was

confirmed on 28 September in a letter from the Director of UNRWA Operations, who stated that the "circumstances under which your request to withdraw your resignation was rejected have not changed. Furthermore, guards posts in camps are earmarked for elimination."

V. Regardless, either under the precedent of the Tribunal in *Abbas* that denies the ability to withdraw a resignation or under what might be considered a fairer rule, the Respondent justifiably refused to permit the withdrawal of the resignation. By waiting three weeks into a four-week notice period to attempt to withdraw his resignation, the Applicant had crossed the line into that period during which it could reasonably be assumed that the Respondent had changed its position and the needs of good management prevailed over the interests of the Applicant. Moreover, several colleagues had counseled the Applicant not to submit the original resignation.

VI. For these reasons I concur.

(Signatures)

Marsha A. ECHOLS

New York, 22 November 2000

Maritza STRUYVENBERG
Executive Secretary